

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1081

Discount Medical Plan Organizations

**SPONSOR(S):** Berfield

**TIED BILLS:**

**IDEN./SIM. BILLS:** SB 2214

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Insurance Committee	15 Y, 0 N	Tinney	Cooper
2) Health Care General Committee		Schiefelbein	Brown-Barrios
3) State Administration Appropriations Committee			
4) Commerce Council			
5)			

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### SUMMARY ANALYSIS

Within the past 10-12 years, business entities known as discount medical plan organizations have begun offering discounts for specified health care services; these organizations are popularly referred to as DMPOs (pronounced "dimpos"). Once a consumer joins a DMPO, the consumer typically receives an ID card, literature outlining the services discounted by the DMPO, a list of participating providers, telephone numbers, and other similar information.

Currently, at least 1 million Florida households (more than 2 million citizens) are members of a DMPO. A discount plan does not fit the traditional definition of an insurance product and thus, was not subject to regulation under the Florida Insurance Code until the 2004 Legislature authorized the Office of Insurance Regulation (OIR) to regulate DMPOs, effective January 1, 2005. In the December 2004 special session, the Legislature postponed from January 1, 2005, until March 31, 2005, the effective date of the regulations governing DMPOs.

The bill makes several changes to current law governing the activities of DMPOs. Specifically, the bill:

- authorizes a DMPO that is a subsidiary to submit the audited financial statement of its parent entity if the statement reflects the consolidated operations of both the parent and the DMPO;
- changes the requirement that a DMPO refund a consumer's membership fees if membership is canceled within 30 days of joining the plan to allow the DMPO to keep up to \$30 for enrolling a member;
- amends current law to specify that if an initial contact with a consumer is made by telephone, disclosures required by law shall be made orally and included with printed materials sent subsequently;
- deletes the requirement that a DMPO provide an audited financial statement annually, requiring instead a sworn affidavit, signed by an officer of the DMPO, certifying that the DMPO has a minimum net worth of \$150,000;
- authorizes OIR to impose an administrative penalty in addition to suspending or revoking the license of a DMPO;
- repeals the provision that makes a DMPO responsible and financially liable for the actions and claims of its marketer;
- amends the requirement that a DMPO post a security deposit of at least \$35,000 to allow a surety bond in lieu of the \$35,000;
- amends penalty provisions OIR may impose to specify that a DMPO is subject to misdemeanor charges only if it "willfully" violates the law; and
- repeals the authority for a citizen to bring a civil action against a DMPO.

There does not appear to be a significant fiscal impact associated with the bill.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

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**DATE:** 4/4/2005

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

**Provide Limited Government and Promote Personal Responsibility**—Under the bill, current laws governing the sales and other activities of DMPOs are amended; some laws are clarified and strengthened and others are repealed or changed from their 2004 original enactment. To the degree that consumer protections may no longer be as strong as when they were enacted in 2004, consumers of DMPO products and services will be more personally responsible for their purchases and DMPOs will be subject to less stringent regulations.

#### B. EFFECT OF PROPOSED CHANGES:

##### **Financial Services Commission: The Office of Insurance Regulation (OIR)**

In Florida, the Legislature has created a bifurcated regulatory structure for the insurance industry. Both the Department of Financial Services (DFS) and the Financial Services Commission (the Commission) are assigned the powers and duties of the former Department of Insurance related to the regulation of insurers and other similar entities. The Financial Services Commission consists of the Governor and the three Cabinet members, i.e., the Attorney General, Chief Financial Officer, and Commissioner of Agriculture. Although the Commission is administratively housed within DFS, the law is clear that such placement is for administrative purposes only; the Commission is not subject to control or limitation by DFS.

The Financial Services Commission oversees the Office of Insurance Regulation (OIR) and the Office of Financial Regulation (OFR). The Commission and the directors of each Office share responsibility for final agency action. The Commission acts as agency head for purposes of rulemaking under ss. 120.536-120.565, F.S., while the directors act as agency heads for other final agency actions under chapter 120, F.S., the Administrative Procedure Act, for all areas within the regulatory authority of their respective Offices. Under current law in s. 20.121, F.S., OIR is directed to license and regulate insurance companies, including the issuance of a certificate of authority which each insurer transacting business in the state must possess.

The Office of Insurance Regulation also is directed by law to conduct financial and market conduct examinations of insurers; regulate the financial status and solvency of insurers, including administrative supervision of insurers; license and regulate insurance administrators, service companies, and premium finance companies and agreements; approve eligible surplus lines insurers; approve policy forms and rates for insurers; approve plans of operation and regulate joint underwriting associations (not including appointment of board members); approve donor annuity agreements; receive reports of claims information from insurers; and approve local government self-insurance plans for health coverage.

##### **Discount Medical Plan Organizations (DMPOs)**

Within the past 10-12 years, business entities have begun offering discounts for specified health care services; these entities are popularly referred to as DMPOs (pronounced “dimpos”). Discount plans have emerged in part to fill the gaps for the many Americans who either lack health insurance, or who are underinsured. Once a consumer joins a DMPO, the consumer typically receives an ID card, literature outlining the services discounted by the DMPO, a list of participating providers, telephone numbers, and other similar information.

DMPOs traditionally have specialized in offering discounts for five ancillary types of health care services: vision, hearing, chiropractic, podiatric, and dental care. Recently, however, DMPOs also have begun offering discounts for more traditional health care services, including physician care,

hospitalization, prescription drugs, nurse medical information lines, vitamins, and emergency care for members who are out of town.

In 2002, the five major DMPOs in the U.S. formed the Consumer Health Alliance (the Alliance) in Dallas, TX to represent DMPOs before state and federal regulatory bodies. The Alliance also serves as a clearinghouse for information to consumers and other parties interested in purchasing discounted health care services. Literature provided by the Alliance states that it “. . . is the national trade association of the discount health care industry.” Representatives of the Alliance assert that the five Alliance members sell some type of discount medical plan throughout the country.

Information provided by the Alliance indicates that more than 20 million Americans currently are served by DMPOs. Representatives of the Alliance estimate that at least 1 million Florida households (more than 2 million citizens) currently participate in a discount medical program. Representatives of the Alliance indicate that the consumer monthly cost for a DMPO that provides only one type of benefit or discounted service ranges from \$15-20; this cost generally covers an entire family, rather than a single individual.

In many ways, a DMPO operates similarly to a preferred provider organization (PPO). That is, a DMPO may contract with individual service providers, such as hearing specialists, optometrists, chiropractors, podiatrists, and dentists, for example, to provide specified services for a predetermined price. The DMPO estimates the number of monthly clients or requests for services a provider may anticipate, and the service provider indicates the price at which services can be provided based upon the estimated volume of patients.

Health care service providers tend to participate with DMPOs because the service providers receive payment from the DMPO member at the time the service is provided. The service provider is not required to file a claim for payment of services, so the provider bears little risk for agreeing to a fixed fee for services provided to DMPO members.

Representatives of the Alliance state that most of the major DMPOs, including the five Alliance members, sell their services at retail prices to individual families of consumers as well as selling their benefits at wholesale prices to organizations such as AARP, AAA Motor Club, credit unions, banks, credit card merchants, and health insurers, among other entities. Wholesale purchasers then resell DMPOs to their respective members or consumers or offer the discount card at no charge as a member benefit.

Before the 2004 action of the Legislature to regulate DMPOs, the plans were not considered as insurance agencies by law and, thus, were not subject to regulation under the Florida Insurance Code. Some DMPOs also are licensed to sell insurance, both in Florida and elsewhere in the country, however.

In December 2004, the Legislature met in special session to consider several issues relating to the four hurricanes that struck Florida in 2004. During the same special session, the Legislature enacted ch. 2004-479, LOF, to delay the effective date of the laws regulating DMPOs from January 1, 2005 until March 31, 2005. This delay was approved because all rules governing the licensure and oversight of DMPO activities had not been approved by the Financial Services Commission. Since that time, the Commission has adopted rules governing the licensure and oversight of DMPOs by OIR.

### **Consumer Concerns about DMPOs**

DFS operates a toll-free consumer information and complaint line for questions regarding insurance agents, companies, policies, and other similar matters. DFS reports that it has received “thousands” of telephone inquiries relating to DMPOs in the past 10-12 years. Specifically, DFS reports that its consumer information staff receives an estimated 1,000 calls per month about DMPOs. Many of these calls are requests for information, but an estimated 39 calls per month report specific consumer complaints or problems with DMPOs which DFS staff investigates. These numbers represent an

estimated 12,000 calls regarding DMPOs annually, of which approximately 468 calls per year result in investigations by DFS or OIR staff into specific complaints.

## **2004 Legislative Action for Regulating DMPOs**

During the 2004 regular legislative session, the Legislature enacted ch. 2004-297, LOF, a law addressing many facets of health care services. Among the provisions of the 2004 law is a regulatory structure authorizing OIR to license and oversee DMPOs operating within Florida. Under ch. 2004-479, LOF, regulation of DMPOs by OIR becomes effective March 31, 2005.

Chapter 2004-297, LOF, created part II of chapter 636, F.S. entitled "Discount Medical Plan Organizations." A discount medical plan is defined as a "business arrangement or contract in which a person, in exchange for fees, dues, charges, or other consideration, provides access for plan members to providers of medical services and the right to receive medical services from those providers at a discount." Similarly, the 2004 law provides additional definitions for plan organizations, marketers, providers, provider networks, medical services and members.

The law requires DMPOs to be incorporated in Florida and licensed through OIR prior to operating in the state. DMPOs are required to submit an application packet approved by the Financial Services Commission. The application packet requires corporation articles and bylaws, background and biographical statements on DMPO principals, fingerprint cards, audited financial statements, and other similar information. DFS reports that the regulatory structure for DMPOs is similar to the licensing process for Specialty Insurers. Licenses for DMPOs, which cost \$50, are valid for 1 year.

OIR is authorized to examine records and investigate DMPOs in accordance with current law governing investigations by OIR. An affected DMPO is required by law to pay any costs incurred during an investigation. Under the 2004 law, a DMPO is prohibited from using certain insurance terminology in its marketing and advertising. The law specifies that a DMPO member should have easy access to the service providers with whom the discount medical plan organization has contracted.

Currently, the law prohibits a DMPO from making payments to its providers and from collecting fees for services from plan members. The law authorizes a DMPO to charge its members a monthly fee and a one-time processing fee, however, if the DMPO collects monthly fees in advance, it must, in case of cancellation by either party, make a pro rata refund to the member.

The law requires a DMPO to make five disclosures to prospective and actual members: (1) to specify that the plan is not a health insurance policy, (2) to state that the plan does not make payments to providers, (3) to explain that the plan provides discounts for medical services, (4) to clarify that the member is responsible for the full amount of the discounted fee, and (5) to provide the corporate name and location of the discount medical plan organization.

Under the 2004 law, a DMPO is required to obtain a written provider agreement with every individual provider who offers discounts under its discount medical plans. The provider agreement must list the services and discounts being offered and must include an agreement that the provider will not charge members in excess of the discount.

The law requires DMPOs to file their forms and rates with OIR. If a DMPO charges its members an amount exceeding \$30 per month or \$360 annually, the charges must be pre-approved by OIR. Each licensed DMPO must file an annual report with OIR including its audited financial statements, a listing of principals, the number of plan members, and other information specified by OIR and the Financial Services Commission.

Under the 2004 law, a DMPO may be penalized for failure to file the required annual report in a timely manner. OIR may levy a fine up to \$500 per day, for the first 10 days and up to \$1,000 for each day after the first 10 days, up to a maximum fine of \$50,000. A DMPO is prohibited from enrolling new members until the annual report is submitted.

The law specifies that a DMPO possess a minimum capital reserve of at least \$150,000 in order to receive a license. The law authorizes OIR to suspend or revoke the license of a DMPO if it violates the law or if OIR determines that the DMPO poses a threat to public welfare.

The law currently requires a DMPO to provide OIR at least 30 days notice before changing its name or address. Further, the law requires a DMPO to maintain an up-to-date web page with a listing of all its providers. The DMPO web address must be included on all marketing materials and discount cards.

The 2004 law assigns responsibility and financial responsibility to a DMPO for any fraudulent or illegal acts of its marketers. The law also requires a licensed DMPO to deposit at least \$35,000 in trust with OIR, in order to protect the plan members. The Financial Services Commission is authorized to adopt rules to implement the licensure of DMPOs.

Finally, the 2004 law appropriated \$169,069 from the Insurance Regulatory Trust Fund to OIR, and authorized three full-time positions, to regulate DMPOs.

### **Rulemaking: Current Status**

Rule adoption and other administrative actions of executive agencies are governed by chapter 120, F.S., the Administrative Procedure Act (the Act). The Act specifies time periods between proposing rules, affording public input, notifying the public that the rules are pending adoption, and final adoption of the rules. An agency must provide public notice of each step in the rule-adoption process.

In July and August 2004, and again in October, staff of OIR invited representatives of several DMPOs currently operating in Florida to Tallahassee to familiarize OIR with DMPO operations, benefits, and members. Following these meetings, OIR began drafting rules for regulating DMPOs.

The Office of Insurance Regulation began implementing the licensure program for DMPOs during summer 2004. By early October, DFS had made available on its website an application for DMPO licensure. The Financial Services Commission is expected to formally adopt the application at the April 5, 2005 meeting of the Governor and Cabinet. Rules governing DMPOs, except for the licensure application, were approved by the Financial Services Commission at the February 16, 2005 meeting of the Governor and Cabinet members.

Since last summer, OIR has identified 53 companies operating in Florida as DMPOs. Of the 53 identified, 31 have already applied for licensure, including the payment of the \$35,000 security deposit required by law. Of the 31 DMPO applications, 9 have been approved by OIR, 18 are currently pending approval, and 4 were returned to the applicants because the application was incomplete. The Office of Insurance Regulation plans to investigate the other 14 DMPOs who have not initiated the licensure process after March 31, 2005.

### **Changes Proposed by the Bill**

The bill changes many of the provisions enacted by the 2004 Legislature for the regulation of DMPOs, although OIR has no authority to enforce the current provisions until March 31, 2005.

Chapter 627, F.S., governs insurance rates and contracts, i.e., policies. Chapter 641, F.S., regulates health service programs, including health maintenance organizations (HMOs), prepaid health clinics, and other health care services. Part I of ch. 636, F.S., governs prepaid limited health service organizations. Definitions relating to DMPOs in s. 636.202, F.S., are amended to delete references to chapter 627, F.S., ch. 641, F.S., and part I of ch. 636, F.S., from the definition of a discount medical plan organization. This change has the effect of recognizing that, even though part II of ch. 636, F.S., relates specifically to DMPOs, a DMPO also may be regulated as an HMO, a prepaid health clinic, a prepaid health service organization, or as another licensed health care service.

Chapter 624, F.S., relates to the administration and general provisions of the Florida Insurance Code. The bill amends s. 636.204, F.S., the section of law that requires DMPOs to seek licensure by OIR, to clarify that a DMPO may be a limited liability company, a partnership, or a foreign entity, in addition to the other types of business specified. The law is amended to specify that a DMPO must be licensed under part II, ch. 636, F.S., or be licensed by OIR under either ch. 624, as a prepaid limited health service organization, or as a health service program under ch. 641, F.S.

As part of its licensure, a DMPO may submit its documents of organization if the DMPO is not incorporated. As an alternative to submitting its audited annual financial statement, a DMPO that is a subsidiary may submit the audited financial statement of its parent entity if the statement reflects the consolidated operations of both the parent and the DMPO. If a DMPO submits its parent entity's audited financial statement to OIR, the parent entity must also submit a written guaranty that the minimum capital requirements of the DMPO required by law will be met.

In its analysis of the bill, OIR expressed concerns about allowing a parent entity's consolidated audited financial statement to serve as the required financial documentation of the DMPO. The Office notes "[a] 'consolidated' statement that speaks to the financial condition of a parent entity does not assure that the financial condition of the licensed DMPO is fully disclosed and can be assessed." Submission of a parent entity's consolidated audited financial statement may hamper the ability of OIR to ensure that a DMPO possesses the minimum surplus requirements in law designed to protect Florida consumers.

Section 636.206, F.S., authorizes OIR to examine the books of a DMPO and to conduct an investigation of a DMPO as warranted. The law is amended by the bill to strike language that applies unspecified applicable parts of the Florida Insurance Code to DMPOs. The bill creates s. 636.207, F.S., to specify the applicability of part II, ch. 636, F.S., to DMPOs and to exempt DMPOs from other provisions of the Florida Insurance Code unless other sections of the code are mentioned by section.

Under current law, s. 636.208, F.S., governs the fees a DMPO may charge its members. If a DMPO collects charges for more than 1 month, the DMPO is required to make a pro rata reimbursement of fees if either the DMPO or member cancels membership. Under the bill, if a member cancels his or her DMPO membership within 30 days of joining the plan, the member will receive a reimbursement of periodic charges after returning the membership card to the DMPO. If a DMPO cancels membership for any reason other than nonpayment of fees by a member, the DMPO is required to make a pro rata reimbursement to the member. A DMPO also is required by the bill to refund to any member who leaves the DMPO the amount in excess of \$30 charged by the DMPO for enrollment or processing the initial application for membership.

In its analysis of the bill, OIR states the amendment to s. 636.208, F.S., "creates a 30 day 'free look' period, but if the card is used, then returned [within the first 30 days], the DMPO may retain up to \$30" of any initial processing fee. The Office of Insurance Regulation further notes that many DMPOs solicit members by telephone, meaning the information regarding refund of fees during the first 30 days will likely be provided to new enrollees upon receipt of their enrollment information, rather than during the telephone solicitation. Based upon these changes, OIR recommends that "all fees, including the one-time processing fee, be returned if a telephone solicited member returns the policy during the free look period."

Section 636.210, F.S., relates to activities that are prohibited for a DMPO. The law is amended to authorize a DMPO to use the word "insurance" in its advertisements and marketing materials "as a disclaimer of any relationship between discount medical plan organization benefits and insurance." Under the bill, a DMPO is authorized to use the word "enrollment" in its advertising and marketing materials.

The law requires a DMPO to make specified disclosures in its advertising and marketing materials. For example, a DMPO must disclose that the plan is not a health insurance policy. The prohibition is changed by the bill to specify that a DMPO must disclose that it is not insurance, rather than it is not a health insurance policy. The law also is amended to specify that if an initial contact with a consumer is

made on behalf of the DMPO by telephone, disclosures shall be made orally and included with printed materials sent to the prospective member subsequently.

Section 636.216, F.S., specifies the forms a DMPO is required to file with OIR as part of the licensure process. The law is amended to authorize OIR to disapprove any form submitted by a DMPO that is unreasonable, discriminatory, unfair, or misleading. A DMPO is authorized to use a form after 60 days if OIR has not acted to approve the form, provided the form has not previously been disapproved by OIR.

Current law, at s. 636.220, F.S., establishes minimum capital requirements for DMPOs. The law requires a DMPO to have a net worth of at least \$150,000 and specifies that OIR may not license a DMPO with a net worth less than \$150,000. By law, a DMPO is now required to file a copy of its audited financial statements annually with OIR, including a balance sheet, income statement, and a statement noting any changes in cash flow since the previous year. The bill deletes the requirement that a DMPO provide an audited financial statement annually, requiring instead a sworn affidavit, signed by an officer of the DMPO, certifying that the DMPO meets the minimum capital requirements specified by law, i.e., a minimum net worth of \$150,000. In response to the proposed changes, OIR notes “[a]udited financial statements are an important consumer protection to assure the financial condition of a DMPO is accurately reported . . . . It should be noted that [the] office has presided over similar limited risk entities where mismanagement or misappropriation of funds [has] resulted in public harm.”

The bill creates a new provision at s. 636.223, F.S., to provide an administrative penalty that may be imposed by OIR. Under the changes, OIR is authorized to issue a cease and desist order against a DMPO believed to have violated the law rather than revoking or suspending the DMPO license. In addition, OIR is authorized to levy a penalty of at least \$100 for each violation, not to exceed an aggregate penalty of \$50,000.

Section 636.228, F.S., governs marketing materials and advertisements of DMPOs. The current requirement for a DMPO to secure a written agreement with a marketer is amended to specify that the agreement prohibit a marketer from using any materials that are not approved in writing by the DMPO. A DMPO is bound by the acts of its marketer, within the scope of the marketer’s agency. The amendment repeals the provision that makes a DMPO responsible and financially liable for the actions and claims of its marketer.

Current law in s. 636.230, F.S., specifies that if a DMPO or its marketer bundle DMPO benefits with any other product or service, the costs for each individual service or benefit must be itemized in writing. The bill amends the law to specify that only a benefit or service that costs more than \$30 must be listed in writing. The bill changes the requirement that a DMPO post a security deposit of at least \$35,000 with OIR to be used to protect DMPO members in the event of insolvency. The bill amends the law to allow a DMPO to post a surety bond in lieu of the \$35,000. In its analysis of the bill, OIR notes, “[p]ermittting a surety bond in lieu of the deposit would delay access to the [funds, if needed,] as surety bonds require preliminary actions by the surety holder before the funds are made available.”

Penalties for a DMPO violating regulations governing its actions are amended by the bill. The bill repeals the ability of OIR to prosecute a person who aids or abets a DMPO in acting illegally. A person who collects fees on behalf of a DMPO must act “purposefully” under the bill in failing to provide the services promised before OIR may prosecute the person.

Under current law, s. 636.242, F.S., a person harmed by a DMPO is authorized to bring a civil action against the alleged violator in circuit court. If a civil suit is successful, the harmed individual may be awarded damages, court costs, and reasonable attorney fees. The authority for a citizen to bring a civil action is repealed by the bill.

#### C. SECTION DIRECTORY:

**Section 1.** Amends s. 636.202, F.S., which contains definitions relating to DMPOs.

**Section 2.** Amends s. 636.204, F.S., which requires DMPOs to be licensed by OIR.

**Section 3.** Amends s. 636.206, F.S., which authorizes OIR to investigate and examine documents of DMPOs.

**Section 4.** Creates s. 636.207, F.S., specifying the applicability of part II of chapter 636, F.S.

**Section 5.** Amends s. 636.208, F.S., relating to the fees a DMPO may charge its members.

**Section 6.** Amends s. 636.210, F.S., which contains prohibited activities a DMPO may not engage in.

**Section 7.** Amends s. 636.212, F.S., which specifies the disclosures a DMPO must provide in its advertising, brochures, and marketing materials.

**Section 8.** Amends s. 636.214, F.S., which governs provider agreements between a DMPO and its service providers or their provider networks.

**Section 9.** Amends s. 636.216, F.S., which governs forms used by a DMPO.

**Section 10.** Amends s. 636.218, F.S., regarding the report a DMPO is required to file annually with OIR.

**Section 11.** Creates s. 636.223, F.S., to authorize OIR to impose an administrative penalty in lieu of suspending or revoking the certificate of authority of a DMPO.

**Section 12.** Amends s. 636.228, F.S., which requires any advertisement, marketing materials, brochures, and discount cards used by a marketer to be approved by the DMPO.

**Section 13.** Amends s. 636.230, F.S., which governs bundling DMPOs with other insurance products.

**Section 14.** Amends s. 636.236, F.S., which requires a DMPO to post a security deposit of at least \$35,000 with DFS for use by OIR in protecting members of the DMPO.

**Section 15.** Amends s. 636.238, F.S., which contains penalties for a DMPO that violates the law.

**Section 16.** Repeals s. 636.242, F.S., which allows a person injured by a DMPO to file a civil action against the DMPO in circuit court.

**Section 17.** Provides an effective date of upon becoming law.



## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

Indeterminate. Laws requiring DMPOs to seek licensure from OIR do not take effect until March 31, 2005. This means OIR has only estimates on the number of DMPOs required to pay the \$50 annual licensure fee. It seems unlikely the number of DMPOs seeking licensure will be significantly affected by the bill.

#### 2. Expenditures:

In ch. 2004-297, LOF, a comprehensive health care law enacted in the 2004 regular legislative session, \$169,069 was appropriated to OIR with authority to fill three regulatory full-time equivalent (FTE) positions for the purpose of regulating DMPOs. The head of OIR has allocated those three positions to each of the applicable units at OIR that will oversee DMPOs.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

None.

#### 2. Expenditures:

None.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Any DMPO operating in Florida is required by ch. 2004-297, LOF, to be licensed by OIR and to pay a fee of \$50 for the annual license. The bill does not change the requirement for licensure or the payment of \$50 for the license.

### D. FISCAL COMMENTS:

In 2004, the Legislature sought to protect Florida consumers from the fraudulent actions of a few entities purporting to be DMPOs. According to OIR, DFS operates a toll-free consumer information and complaint line for questions regarding insurance agents, companies, policies, and other similar matters. DFS reports that it has received "thousands" of telephone inquiries relating to DMPOs in the past 10-12 years. Specifically, DFS reports that its consumer information staff receives an estimated 1,000 calls per month about DMPOs. Many of these calls are requests for information, but an estimated 39 calls per month report specific consumer complaints or problems with DMPOs which DFS staff investigates. These numbers represent an estimated 12,000 calls regarding DMPOs annually, of which approximately 468 calls per year result in investigations by DFS or OIR staff into specific complaints.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

#### 1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill makes several changes to current law governing the activities of DMPOs. In its analysis of the bill, OIR reports that some of the changes proposed by the bill will weaken the consumer protections enacted by the Legislature in 2004.

Chapter 624, F.S., relates to the administration and general provisions of the Florida Insurance Code. The bill amends s. 636.204, F.S., the section of law that requires DMPOs to seek licensure by OIR, to clarify that a DMPO may be a limited liability company, a partnership, or a foreign entity, in addition to the other types of business specified. In its analysis of HB 1081, OIR notes, “[a] partnership, which generally lacks established and documented corporate procedures and business practices to ensure continuity, is an inappropriate entity for DMPO licensure.”

Under current law, a DMPO is required to submit to OIR a copy of the DMPO’s audited annual financial statement; under the bill, a DMPO that is a subsidiary may submit the audited financial statement of its parent entity if the statement reflects the consolidated operations of both the parent and the DMPO. The Office of Insurance Regulation expressed concerns about allowing a parent entity’s consolidated audited financial statement to serve as the required financial documentation of the DMPO. The Office notes “[a] ‘consolidated’ statement that speaks to the financial condition of a parent entity does not assure that the financial condition of the licensed DMPO is fully disclosed and can be assessed” to ensure that a DMPO possesses sufficient fiscal resources to meet the minimum surplus requirements in law designed to protect Florida consumers.

The bill creates s. 636.207, F.S., to specify the applicability of part II, ch. 636, F.S., to DMPOs and to exempt DMPOs from other provisions of the Florida Insurance Code unless other sections of the code are mentioned by section. In its analysis of HB 1081, OIR notes with respect to the proposed changes to ss. 636.206 and 636.207, F.S., “it is . . . necessary to include additional language to preserve the OIR’s authority to deny license applications that do not comply” with current law.

The bill creates a new provision at s. 636.223, F.S., to authorize OIR to impose an administrative penalty on a DMPO that violates the law. Under the changes, OIR is authorized to issue a cease and desist order against a DMPO believed to have violated the law rather than revoking or suspending the DMPO license. In addition, OIR is authorized to levy a penalty of at least \$100 for each violation, not to exceed an aggregate penalty of \$50,000. The Office of Insurance Regulation recommends that the maximum penalty be changed to \$100,000 “to conform to similar penalty provisions . . . used for similar entities” elsewhere in the Insurance Code.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**

None.